



# STATE OF INDIANA

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Mr. Marcus D. Harden  
Via Email: mharden4@indstate.edu

*Re: Formal Complaint 10-FC-328; Alleged Violation of the Access to Public Records Act by the City of Gary Department of Public Parks*

Dear Mr. Harden:

This advisory opinion is in response to your formal complaint alleging the City of Gary Department of Public Parks (the "Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Department's response to your complaint is enclosed for your review.

## BACKGROUND

In your complaint, you allege that you delivered by hand a records request to the Department on December 1, 2010. You requested "copies of fund balances, [a] listing of employees and salaries as well as automobiles used by the department." As of December 27th, you had not received a response to your request.

In response to your complaint, Superintendent Caren Jones of the Department sent a letter dated December 28, 2010, to our office. In that letter, Supt. Jones states that the Department's Public Information Office would forward you a response by December 31st.

## ANALYSIS

The public policy of the APRA states, "[p]roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. The Department does not contest that it is a "public agency" under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the

Department's public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. The Department should have responded to your hand-delivered request within 24 hours (i.e., on December 2nd). Because the Department failed to do so, your request was denied as a matter of law. *Id.* According to the Department's response, you should have received its response by December 31, 2010.

There are no prescribed timeframes when the records must be actually produced by a public agency. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*. Here, it is unclear why the Department did not respond to you between December 1st and December 31st. As a result, it is my opinion that the Department has not met its burden to show that the time it took to make your requested records available to you was reasonable.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Department has not sustained its burden to show that it produced your requested records within a reasonable amount of time. I trust the Department will release all responsive records to you as soon as possible. To the extent an agency persists in its denial of access following the issuance of an advisory opinion from this office, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Supt. Caren Jones